



Neutral Citation Number: [2026] EWCA Civ 1375

Case No: CA-2025-002821

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)
Mr Justice Leech
[2025] EWHC 2480 (Ch)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29/10/2026

Before :

LORD JUSTICE ZACAROLI
and
LORD JUSTICE BUTCHER

Between :

**(1) TRANSWORLD PAYMENT SOLUTIONS U.K.
LIMITED (in liquidation)**

**(2) STEPHEN JOHN HUNT (in his capacity as
liquidator of Transworld Payment Solutions U.K.
Limited)**

Appellants

- and -

(1) FIRST CURAÇAO INTERNATIONAL BANK N.V.

**(2) JOHANNES (JOHN) CHRISTIAAN MARTINUS
AUGUSTINUS MARIA DEUSS**

Respondents

Simon Salzedo KC and Caley Wright (instructed by Stewarts Law LLP) for the Appellants
Andrew Scott KC and Barnaby Lowe (instructed by Jones Day) for the First Respondent
Bankim Thanki KC, Saul Lemer and Paul Fradley (instructed by Quinn Emanuel
Urquhart & Sullivan UK LLP) for the Second Respondent

Hearing date: 15 October 2026

Approved Judgment

This judgment was handed down remotely at 10.00am on 29.10.2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Zacaroli:

1. On 15 October 2026 we heard an application for permission to appeal by the claimants in this action, Transworld Payment Solutions UK Limited (in liquidation) (“TWPS”) and Stephen John Hunt, the liquidator of TWPS and various other companies, against the order of Leech J dated 23 October 2025.
2. The claimants seek permission on ten grounds, against numerous of the decisions reached by the judge in a judgment that spans 429 pages. It is common ground, however, that unless the appellants succeed on the first ground of appeal – against the judge’s rejection of the allegation of dishonesty against the second defendant (“Mr Deuss”) – they cannot succeed on any of the other grounds.
3. At the end of the hearing, we announced our decision to refuse permission. These are our short reasons for doing so.
4. Mr Deuss was the sole shareholder, a director and, at the relevant time, CEO and President of the first defendant (“FCIB”). FCIB was a bank incorporated in the Netherlands Antilles. It ceased trading in 2006 when it was placed into emergency measures by the Court of First Instance in Curaçao. It had provided electronic banking facilities to a number of companies (the “MTIC Companies”) operating in the telecommunications and computers sector (the “T&C Sector”) that were involved in “carousel” or “missing trader intra-community” fraud (“MTIC fraud”).
5. Mr Deuss was also the ultimate beneficial owner of TWPS. TWPS marketed FCIB’s services.
6. The claimants’ claim in this action was principally based on the allegation that FCIB participated or assisted in the fraud committed by the directors of the MTIC Companies. The pleading alleged, among other things, dishonest assistance in breach of fiduciary duty and fraudulent trading. The only individual against whom the claimants alleged dishonesty was Mr Deuss.
7. Mr Deuss did not give oral evidence, but the judge heard evidence from certain others involved with FCIB and TWPS.
8. It was not alleged that Mr Deuss was actually aware that any company to whom FCIB provided banking services or any transaction in relation to which FCIB provided such services was fraudulent. The claimants’ case was instead based on the contention that Mr Deuss knew or shut his eyes to the facts that MTIC fraud was believed to be prevalent in the T&C Sector, and that he nevertheless caused FCIB to provide banking facilities to the MTIC Companies despite the fact that he knew FCIB’s compliance procedures did not provide adequate protections.
9. That involved the judge, following a 19-day trial, making detailed findings of fact about the nature and extent of Mr Deuss’ knowledge of MTIC fraud in the T&C Sector, the compliance measures in place at FCIB from time to time and Mr Deuss’ knowledge and understanding of them. It then involved the judge making an evaluative judgment balancing all those factors.

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10. That is what the judge did, in a lengthy section of his judgment spanning nearly three hundred paragraphs, carefully reviewing the evidence, including the contemporaneous documents. Having done so he rejected the claim that Mr Deuss had been dishonest.
11. It is well known that an appeal against findings of this nature, where the judge has heard evidence and been immersed for a long period in a wealth of contemporaneous documentary evidence, faces a high hurdle: see for example *LZLabs GmbH & Ors v IBM UK Limited* [2025] EWCA Civ 842 at §20 to §21.
12. The filed grounds of appeal and the original skeleton argument in support were overlong and failed to identify with any precision where the judge is said to have made an error of law in dismissing the allegations of dishonesty. On reviewing the application on the papers, I directed that it be adjourned to an oral hearing, and that the claimants file a further skeleton of no more than 12 pages identifying the errors of law said to have been made by the judge under each ground.
13. The further skeleton argument identified as an alleged error of law that the judge set a test for dishonesty – that Mr Deuss had to have the suspicion that the vast majority of prospective customers in the T&C Sector were engaged in MTIC fraud – that did not reflect the parties’ statements of case and vastly overstated the requirement for dishonesty. This was said to have led the judge to ignore a plethora of evidence of Mr Deuss’ dishonesty and to make further fundamental errors in the application of his test. Specifically, the judge is said to have (1) made a mathematical error in one paragraph, as a result of which he massively underestimated the extent to which MTIC fraud was in fact prevalent in the T&C Sector; (2) considered too short a portion of the relevant period; (3) treated Mr Deuss’ acknowledgments that FCIB’s compliance measures were inadequate as evidence of honesty even though he continued to target the T&C Sector; and (4) wrongly imposed a requirement that the claimants show that others within FCIB/TWPS were party to the fraud.
14. At the hearing of the application for permission to appeal, Mr Salzedo KC (newly instructed on behalf of the claimants) put at the forefront of his argument that the judge had misapplied the test for dishonesty. The judge, at §69 of the judgment, noted that the test for dishonesty was common ground among the parties, being the test identified in *Ivey v Genting Casinos (UK) Ltd* [2017] UKSC 67; [2018] AC 391. It involves a two-stage test: the tribunal must first identify the actual state of mind of the individual’s knowledge or belief as to the facts; second, the question whether the behaviour was dishonest is to be determined by applying the objective standards of ordinary decent people. At §70, he referred to the concept of “blind-eye” knowledge – as it relates to a claim for accessory liability in dishonest assistance in a breach of fiduciary duty, observing that it must be shown that the accessory suspected that the fiduciary was engaged in wrongdoing and also that they made a conscious decision to look the other way and not to investigate.
15. No issue is taken with the test as set out by the judge. Mr Salzedo submitted, however, that the judge failed to follow the two-stage approach that is required, and that he wrongly collapsed the two stages of the test into one. He relied on a passage in the decision of this Court in *Grosvenor Property Developers Limited v Portner Law Limited* [2026] EWCA Civ 1238, in which Falk LJ (with whom Phillips LJ and Nugee LJ agreed) warned (at §52) against compressing the two stages into one.

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16. Mr Salzedo accepted that this was not an error of law that was expressly identified in the grounds of appeal, and that it would be necessary to apply for permission to amend the grounds of appeal if it was to be advanced. Had there been sufficient merit in the point, that would not have been a fatal objection. I am satisfied, however, that there is no real prospect of this Court overturning the judge's conclusion on this issue.
17. The warning in *Grosvenor Property Developers* was against compressing the two stages of the test into one. The judge in that case had wrongly identified the test she had to apply as being whether an honest person would have acted as the defendant had in that case. As Falk LJ pointed out (at §55), articulating the test in that way runs the very real risk of determining conduct by reference to standards of behaviour which includes carelessness or some other failing that falls short of dishonesty.
18. That is not an error the judge fell into in this case. He articulated the test correctly, and he made clear findings as to the subjective belief of Mr Deuss. The claimants' complaint is that in expressing his conclusions the judge did not then separately set out his answers on the first and second stages of the test. That is a complaint of form over substance. In a case where (as I have noted above) it was not pleaded that Mr Deuss was aware of specific fraudulent transactions or companies, the task for the judge was to determine whether Mr Deuss' knowledge of the prevalence of MTIC fraud in the T&C Sector and his knowledge of inadequacies in FCIB/TWPS's compliance functions was such that his behaviour in continuing to target and provide services to customers in the T&C Sector could satisfy the *Genting* test of dishonesty. That is inevitably an objective question, and there is nothing to indicate that the judge failed to appreciate that.
19. In various places in stating his conclusions the judge – having determined what Mr Deuss knew or believed – referred to his behaviour as not dishonest: see for example §388 to §390 and §420 to §421, §464, §474, §475 and §480. Reading these passages in the context of the judgment as a whole, it is clear that the judge was here reaching an objective conclusion, i.e. the second part of the test.
20. I do not accept the contention (expressed in the summary skeleton argument) that it is arguable that the judge applied a test that did not reflect the parties' statements of case. At §221 of the judgment, the judge quoted the claimants' case, including that Mr Deuss knew or shut his eyes to the fact that MTIC fraud was believed to be prevalent (which the judge understood to mean widespread or very common: see §225) in the T&C Sector, that many reputable banks (which the claimants said were "any UK high street bank": see §225) had ceased to provide financial services to the T&C Sector and that Mr Deuss, despite such knowledge, dishonestly determined to capture such business without imposing any effective AML procedures. Having set out a detailed review of the documents (from §235 onwards), the judge went on to address each of those allegations between §361 and §441, before then addressing a number of other specific allegations at §442 to §505.
21. The claimants contend that the judge wrongly 'compartmentalised' the specific allegations relating to dishonesty and so failed to address Mr Deuss' conduct against what he knew at relevant times. That was based on a comment in the judgment of this Court in *Group Seven Ltd v Nasir* [2019] EWCA Civ 614; [2019] 3 ALR 1011, at §96 to §97. In those paragraphs, what the Court meant by a "compartmentalised" approach was analysing separately the impugned payments into a deposit account and the various payments made out of it. That, the Court held, may have made sense in relation to some

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defendants, who were kept in the dark about the dishonesty of a particular payment. It was, however, not appropriate in relation to one defendant (Mr Landman) whose negotiation of that payment and its concealment from his colleagues and others was “self-evidently” dishonest. Moreover, because the receipt of the impugned payment by Mr Landman was itself dependent on the prior receipt of a much larger sum into the relevant account, it was impossible to insulate Mr Landman’s dishonesty in assisting making of payments out of the account with his equally dishonest conduct in facilitating the initial receipt of the larger sum into the account. That is far removed from the circumstances of this case, where no particular transaction was identified as being fraudulent and where no part of Mr Deuss’ conduct in relation to the provision of services by FCIB/TWPS can be said to be self-evidently dishonest.

22. The judge, at §219, observed that the only way to keep the fact-finding process within manageable bounds was to stick closely to the claimants’ pleaded case, which is what he did between §361 and §505. I do not accept that it is arguable with a real prospect of success that in so doing the judge failed to have regard to the overall question whether he could infer dishonesty on Mr Deuss’ part from his findings as to Mr Deuss’ knowledge.
23. Mr Salzedo submitted that the judge set up an unrealistic hurdle, before he was prepared to find dishonesty, that Mr Deuss knew that the vast majority of companies in the T&C Sector were engaged in MTIC fraud. The judge expressed the point in slightly different ways in different parts of his judgment, but the critical passage is at §388, where he expressed his finding as follows: “he did not know or turn a blind eye to the fact that MTIC fraud was believed to be prevalent or widespread in the T&C sector”. That was the formulation (as noted above) pleaded by the claimants. It was not arguably an error that in answering that case the judge created an unrealistic hurdle.
24. In the summary skeleton argument, the claimants also relied on the fact (which the defendants accept) that the judge made an arithmetic error in §368 in estimating the percentage of the T&C sector that was involved in MTIC fraud. Mr Salzedo made less of this point but maintained that it was material to the judge’s conclusion. The first point to note is that the actual percentage of those in the T&C Sector engaged in MTIC fraud is not directly relevant: what mattered was Mr Deuss’ understanding and belief at the time.
25. Secondly, the judge’s principal point on this issue was that it was very difficult to reach any view on it, because the evidence available was very thin – consisting of just one set of figures and one person’s (Mr Vallerey’s) own analysis in November 2005, and because the claimants should have, but had not, adduced any expert evidence on the question at all (see §367 to §370).
26. Third, it is not realistically arguable that the error infected the judge’s key conclusion at §388. He provided a number of reasons for accepting Mr Deuss’ evidence that he did not know or turn a blind eye to the prevalence of MTIC fraud, the first and most important of which was that it was consistent with the contemporaneous documents (which he had reviewed and set out in detail earlier in his judgment).
27. It is true that in one of the sub-paragraphs in §388 (sub-paragraph (11)), setting out his reasons, the judge makes a reference back to the figures which were the product of his arithmetic error. The sub-paragraph begins, however, with the sentence: “I can also

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illustrate this point in the following way” (the point being his conclusion in the previous sub-paragraph that he had not made primary findings of fact which would justify the inference that Mr Deuss was dishonest when he composed his email of 16 December 2006, quoted at §311 of the judgment). That sentence indicates that this sub-paragraph is additional to, and not part of, his principal reasoning. I do not accept that the arithmetic error arguably – with a real prospect of success – infected the judge’s findings as to Mr Deuss’ knowledge and belief.

28. Mr Salzedo also submitted that, on the judge’s own findings, Mr Deuss was obviously dishonest. This was premised on the contention that the judge had found Mr Deuss knew 50% of the T&C Sector was involved in MTIC fraud. Even if this proposition identified an error of law as opposed to a disagreement with the judge’s evaluative conclusion, it fails because the premise is wrong. The only support for it is §388(11) where the judge was “prepared to accept” that Mr Deuss made the same assumptions the judge had made as to the prevalence of MTIC fraud among FCIB’s customers, which itself is a reference back to §379 where, despite the lack of evidence, the judge was prepared to draw the inference that by June 2006 as many as one in two of FCIB’s T&C customers were fraudulent. Read in context, the judge was saying that for the purposes of the illustration in that paragraph he was prepared to accept that Mr Deuss would have been so aware. That is not a finding that Mr Deuss was aware, and the claimants could point to nothing else in the judgment where the judge made such a finding.
29. Standing back, as Mr Thanki KC, for Mr Deuss explained, there was ample evidence on which the judge could reach the conclusions: (1) that Mr Deuss did not know or turn a blind eye to the fact that MTIC fraud was believed to be prevalent or widespread, (2) that the compliance function at FCIB had not been known to be so inadequate that it was incapable of sifting out fraudulent customers (see for example, the evidence referred to at §244-246, §291, §394(4) and §406 of the judgment) or (3) that Mr Deuss did not cause FCIB to make banking facilities available to companies in the T&C sector without making enquiries to see if they were engaged in MTIC fraud (§441). These were findings based on multiple other findings of fact (between §361 and §441) which the judge was entitled to make (and which are not in themselves challenged). The first ground of appeal does not reach the required threshold of identifying an arguable error of law with a real prospect of success.

Lord Justice Butcher

30. I agree.